

**Wyoming Asphalt Paving Co., Inc. and Local 7, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.**  
Case 7-CA-18082

June 24, 1981

**DECISION AND ORDER**

Upon a charge filed on August 1, 1980, by Local 7, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Wyoming Asphalt Paving Co., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on August 29, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that at all times material herein and since on or about January 17, 1978, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in an appropriate unit, and that since on or about January 17, 1978, the Union has been recognized as such representative by Respondent and such recognition has been embodied in a collective-bargaining agreement effective by its terms for the period June 1, 1977, to June 1, 1980. The complaint further alleges that on or about March 3, 1980, the Union, by letter, requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of its employees in the appropriate unit with respect to their rates of pay, wages, hours of employment, other terms and conditions of employment, and a new collective-bargaining agreement setting forth such matters, and that since on or about March 3, 1980, Respondent has failed and refused to bargain with the Union.

On March 16, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, asserting that Respondent has failed to file an answer to the complaint. Subsequently, on March 19, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has filed no response to the Notice To Show Cause and, accordingly, the alle-

gations of the Motion for Summary Judgment stand uncontroverted.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

According to the uncontroverted allegations of the Motion for Summary Judgment, Respondent failed to file an answer to the complaint. Moreover, as no answer had been filed, on January 20, 1981, the Regional Attorney wrote to Respondent informing it that Regional Office records indicated that Respondent had not filed an answer, and that, if an appropriate answer were not filed by February 3, 1981, a Motion for Default Judgment would be sought. A copy of the Regional Attorney's letter was attached to the Motion for Summary Judgment as Exhibit "E." Although Respondent was thus additionally warned about the consequences of failing to file an answer to the complaint, Respondent did not file such an answer and further failed to file a response to the Notice To Show Cause. No good cause to the contrary having been shown, in accordance with the rule set forth above, the allegations of the complaint herein are deemed to be admitted and found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

At all times material herein, Respondent has maintained its office and place of business at 470 North 12th Street in the city of Plainwell, Michi-

gan, where it is engaged in the nonretail business of asphalt paving. Respondent's Plainwell, Michigan, facility is the only facility involved in this proceeding. During the year ending December 31, 1979, which period is representative of its operations during all times material herein, Respondent in the course and conduct of its business operations purchased and caused to be transported and delivered to its Plainwell place of business asphalt valued in excess of \$50,000, which asphalt was transported and delivered to said place of business in Plainwell, Michigan, and received from Marathon Oil Company located in the State of Michigan, which oil company had received the said goods and materials delivered to Respondent directly from points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Local 7, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICE

### A. *The Collective-Bargaining Representative*

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All truck drivers employed by the employer at its Plainwell, Michigan, facility; but excluding all office clerical employees, guards and supervisors as defined in the Act.

#### 2. The bargaining history

At all times since January 17, 1978, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in an appropriate unit and, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

### B. *The Request to Bargain and Respondent's Refusal*

Since on or about March 3, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively for a new contract with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about March 3, 1980, and continuing at all times thereafter to date, Respondent has failed and refused to bargain with the Union as the exclusive representative for the purposes of collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since March 3, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order Respondent to post appropriate notices.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Wyoming Asphalt Paving Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 7, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All truckdrivers employed by Respondent at its Plainwell, Michigan, facility, but excluding all office clerical employees and guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since January 17, 1978, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 3, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Wyoming Asphalt Paving Co., Inc., Plainwell, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 7, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All truck drivers employed by the Employer at its Plainwell, Michigan, facility; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Plainwell, Michigan, location copies of the attached notice marked "Appendix."<sup>1</sup> Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>1</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Local 7, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding

is reached, embody such understanding in a signed agreement. The bargaining unit is:

All truck drivers employed by the Employer at its Plainwell, Michigan, facility; but ex-

cluding all office clerical employees, guards and supervisors as defined in the Act.

WYOMING ASPHALT PAVING CO.,  
INC.